IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.834 OF 2002

M/s.Shaila CHS Ltd. .. Appellant
(Org. Defendant)

vs.

M/s.Odean Theatres Pvt.Ltd. .. Respondent.
(Org. Plaintiff)

Mr.R.V.Pai i/b. Kantawala & Co, Advocate for the Appellant.

Mr.Sudarshan Singhrani with Mr.Vinod Savaji, Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 22nd March, 2005.

P.C. :

1. Heard Counsel appearing for the parties. The Appeal from Order is preferred by the Original Defendants for challenging the impugned Judgment and Order dated 15th, 16th & 18th July, 2002, by which the Notice of Motion taken out by the Plaintiffs has been partly made absolute by passing the following order:

> "Prayer (a) of the N/M is partly granted and the defendants, their office bearers, their members are restrained from parking their cars in the Plaintiffs property and

> on the access road. However, it is understood that the restraining order is not for ingress and egress of the members of the defendant and their vehicles."

Initially ad-interim order was passed in favour of the Appellants by this Court, which was vacated by order dated 28.10.2002. An application was made for recalling the order dated 28.10.2002 which also came to be rejected. An application was filed in the trial Court thereafter under Order 39 Rule 4 for modification of the impugned Judgment and Order which was rejected on 20.2.2004.

2. Thus, the order impugned is operating for last more than two years. Shri Pai submitted that in view of the finding recorded in paragraph No.12 of the impugned Judgment and Order, the learned trial Judge should have restrained the original Plaintiffs from parking any vehicles on the access. However, no such prayer was made by the Appellants before the Trial Court. It is for them to take out appropriate proceeding in that behalf. The order for temporary injunction is a discretionary order.If such discretionary order passed on consideration of prima facie case is in

operation for last more than two years, no interference can be made at this stage.

3. Hence A.O. is dismissed. No order as to costs.

4. It is obvious that the trial Court will decide the suit on its own merits without being influenced by the impugned Judgment and order and the confirmation of the same by this Court.

5. Hearing of the Suit is expedited. Considering the fact that the Appellants have been restrained from parking the vehicles, the trial Court will decide the suit as expeditiously as possible and in any event on or before 30.4.2006.

6. Parties and the concerned Court to act on the authenticated copy of this order.

(A.S.OKA, J.)